

Gross & Associates) contract with Bel Pre Square" and (iv) "a proper election of Board members..."

Findings of Fact

Complainant is the owner and resident of a unit within the Bel Pre Square townhouse community, a 50 unit townhouse project located in Silver Spring, Montgomery County, Maryland. At the hearing on October 19, 2005 before the CCOC Hearing Panel, Complainant offered her own testimony, and called as witnesses the management agent, Marshall Gross of M. R. Gross & Associates, and the Respondent's President, Vivian Scretchen. Complainant identified and attempted to introduce four (4) exhibits, in addition to several portions of the Commission's Exhibit #1.

Complainant commenced her case by questioning Mr. Gross regarding the source of the Respondent's authority to "foreclose" on her for non-payment of fees. Mr. Gross responded by directing the Panel's attention to pages 48, *et seq.* of Commission's Exhibit #1, the Declaration of Covenants, Conditions and Restrictions for Bel Pre Square HOA recorded in Liber 4719 at folio 570, *et seq.* among the Land Records of Montgomery County, Maryland, in which the Association is given the authority to collect assessments, file suit against owners for non-payment of assessments, create liens for non-payment of assessments and foreclose upon those liens. Mr. Gross explained that the Respondent did not attempt to "foreclose" on Complainant's property, but rather, that the Respondent filed suit against Complainant for unpaid assessments in the District Court of Maryland for Montgomery County.

Mr. Gross explained that Bel Pre Square was developed by the Housing Authority of Montgomery County, Maryland (now the Housing Opportunities Commission "HOC") as a part of the county's moderately priced dwelling unit program in 1975. The project began as a rental community but eventually houses were sold, many to the tenants, to the extent that by the year 1999, 45 of the 50 homes had been sold.

Complainant then questioned Ms. Scretchen regarding the circumstances of her election on November 18, 2004. Ms. Scretchen testified that a quorum was present at the meeting and that she and the other Board members were duly elected. She was also questioned as to the January 9, 2002 election and stated that a quorum was present at the meeting and that she and the other Board members were duly elected. She proffered that Mr. Gross had copies of the pertinent records of those meetings.

Complainant then identified as her Exhibit # 1 pages 9-11 of Commission's Exhibit #1, consisting of letters from Complainant to Mr. Gross and replies from Mr. Gross to the Complainant regarding unpaid assessments and the finance charges, all of which were admitted into evidence. Complainant's Exhibit #2, a "Letter of Intent" between HOC and the Transition Committee of Respondent, was identified by her but was not admitted into evidence, due to Respondent's objections based upon lack of proper authentication. Complainant then explained

that there had been a transition committee appointed from among the homeowners to work with the HOC beginning in 1993 to transition the community to self-governing by the homeowners.

Complainant attempted to introduce what was identified as Complainant's Exhibit "I" captioned as "Petition of Requisition" with several pages of attached signatures. The document lacked an "Attachment" of a 07/31/98 letter from Michael E. Gross, and the objection of Respondent to the lack of authentication of the attached signatures was sustained. The only "authentication" thereof was the notary statement of Complainant as to the signatures which the Panel believed was too self-serving to act as proper authentication. Respondent later produced testimony that when Complainant had acted as Secretary of Bel Pre Square in the 1990s she had retained all copies of Association documents including the signature pages of a valid petition signed by many homeowners regarding another matter, casting further suspicion on the veracity of the "Petition of Requisition." Under cross-examination by Respondent, Complainant testified that she had served as a director and the secretary of the Respondent until she resigned from those positions, which she testified she did because the parking spaces had been unfairly assigned to the owners. Further, Complainant admitted that she had retained copies of documents of the Respondent that were in her possession and did not return them when requested to do so, including minutes of the meetings and the Association By-Laws. She admitted that she had never objected in writing that the Board was not properly elected, other than the filing of the Complaint with the Commission.

Complainant testified under cross-examination that in September of 2003 the Respondent increased the burden of the payments required from the owners by installing water sub-meters on each home. As a result, the owner had to pay for the usage of water at the home plus the dues of \$60.22 per month. Previously, the water bills had been paid by the Respondent as a part of that \$60.22 monthly assessment. She testified that Marshall Gross had misled the owners by stating that the monthly HOA dues would go down when the sub-meters were installed, but that was not the case.

Complainant then identified Complainant's Exhibit #4, a computer printout from the State Department of Assessments and Taxation of Maryland showing Parcel B of Bel Pre Square still to be owned by the Housing Authority of Montgomery County, Maryland, and voicing her objection to paying dues to maintain land which was not owned by the Respondent. Complainant's Exhibit #4 was admitted. Complainant next identified pages 5-8 of Commission's Exhibit #1, a copy of a record from the clerk of the Circuit Court for Montgomery County, Maryland of the indexes of the Court's Homeowner Index from November, 1988 until December 20, 2004, noting that the Respondent's name was not shown thereon. Complainant objected to paying dues to the Respondent on the basis that the Respondent was not legally filed with the county. Pages 5-8 of Commission's Exhibit #1 were admitted.

Complainant concluded her case by identifying Complainant's Exhibit #3, a printout of certain charges and payments on her account with the Respondent, stating that she was seeking reimbursement on all charges thereon other than the monthly charges of \$60.22 which amounted to the sum of \$3,044.11.

Respondent's case began with the calling of witness Norma Clarke, who testified that she has been a resident of Bel Pre Square since 1984 and an owner since 1986, and that she had been on the Board in the 1990s. She testified that the dues have remained at \$60.22 per month since 1984, and that she was on the Board when Marshall Gross was hired as manager. He had made the most affordable offer to the Board for management services and the budget was tight so he was selected. Ms. Clarke further testified contradicting the testimony of the Complainant, stating that Complainant was voted off of the Board of Directors of Respondent due to her excessive "rhetoric" and "disorder" and that all of the members of the Board at that time voted unanimously to remove Complainant from the Board. She further testified that she remembered that the Board asked Complainant to hand over copies of corporate records but Complainant never delivered them to the Board.

Respondent then called Irene Cross, an owner of a townhouse in Bel Pre Square since 2000, who has served on the Board of Directors since 2002. She testified that she believed that the \$60.22 per month assessment was the lowest in the county for a similarly situated HOA. She further testified that she is always current with the payment of her dues to the HOA.

Respondent called Peggy Mack, an owner and co-treasurer of Bel Pre Square. Ms. Mack testified that the dues of \$60.22 per month covered trash collection, common area maintenance, snow removal, streetlights, etc. and that the Respondent often had difficulty making the payments to the landscaping contractor because of delinquencies in dues payments. She further testified that Mr. Gross is a good property manager, attends all of the meetings, and provides the Board with reports on financial status and delinquencies.

The next witness for Respondent was Ms. Scretchen who testified that she has been President of the Board of Directors since 2002 and served as Vice President prior to her election as President. She never served on the Board of Directors at the same time as Complainant. She testified that when she came on the Board there were many delinquent owners, including Complainant, and that the water bills were so high, about \$3,000-4,000 per month, that there was not enough money in dues to cover other expenses. In 2003 the Board of Directors decided to install sub-meters for water usage and require the owners to pay for their own usage. As a result, the water bills have gone down to about \$1,000 per month and that amount is paid by the owners, leaving more funds for other Association expenses.

Ms. Scretchen stated that she believed that the "Petition for Requisition" was not valid, and that the signature pages were adapted from pages of a genuine petition which the Board of Directors had solicited. She testified that the finance charges and fees assessed against Complainant were similarly assessed against all delinquent owners and that Complainant was not singled out. Further she testified that at the various elections of the Board of Directors, any person whose dues were delinquent was ineligible to serve on the Board of Directors according to the By-Laws.

Respondent then called Marshall Gross, the management agent for Bel Pre Square, who testified that he has served as management agent for the Respondent for many years. He identified pages 38-61 of Commission's Exhibit #1 as being the Declaration and Amendments of the Respondent, duly filed among the land records of the county. He identified the Amendment dated in February 2002 turning over the management of the Respondent from HOA to the homeowners. All such pages were admitted into evidence. The Amendment further provided for the installation of sub-meters for water usage. He testified that the Amendment was duly approved by over seventy-five percent (75%) of the homeowners as set forth therein. Pages 63-68 of Commission's Exhibit #1 were identified as the Articles of Incorporation of the Respondent and were admitted, as was page 62, a copy of a computer record of State Department of Assessments and Taxation of Maryland showing the Respondent to be a Maryland non-stock corporation in good standing.

Mr. Gross then identified Respondent's Exhibit #1, from the Clerk of the Circuit Court for Montgomery County, Maryland indicating that on April 15, 2005, the Respondent's HOA records were indexed in the county HOA Depository as #593-X. Respondent's Exhibit #1 was admitted. The State Department of Assessments and Taxation of Maryland printout regarding the ownership of Lot 28 in Bel Pre Square Subdivision by Doris East, being page 69 of Commission's Exhibit #1, was identified and admitted.

Respondent's Exhibit #2, the owner ledger of the account of Doris East, was identified and admitted, and Mr. Gross explained the meaning of abbreviations thereon. Ms. East had been delinquent from before the turnover to the homeowners from HOC and continued to be delinquent until January 2005 when she paid the account in full in the sum of \$4,298.57 and she has been paying dues in full and on time since that time. He testified that neither he nor the Board has treated Ms. East and her delinquencies differently from any other owner, and that the procedure implemented by the Board of Directors in January, 2005 had prompted many more dues payments to be made in a timely manner.

Mr. Gross testified that he provided periodic financial statements to the Board, but not to individual owners, but that owners could request the records and could see them by appointment in his office. He added that Ms. East was provided access to the books and records during mediation held pursuant to the Complaint with the Commission.

In closing, Complainant reiterated her request for reimbursement of the \$3,044.11 in water charges and finance charges, stating that the Respondent has taken advantage of her. Respondent argued that none of the Complainant's charges were valid, that all elections were legal, that the Respondent had authority to collect dues and finance charges, that she was never denied access to financial reports and that there was no evidence that the management agent had misled homeowners or had otherwise acted improperly.

At the close of Respondent's case, Respondent requested that the Commission assess attorney's fees against Complainant as a result of Respondent's contention that the Complaint was completely without merit or justification. The record was left open following the hearing for a

period of seven days in order to permit Respondent to provide an invoice with the billings on this matter. On October 25, 2005, Respondent submitted an invoice showing billings in the sum of \$2,729.50.

Conclusions of Law and Discussion

Upon a review of the organizational documents of Bel Pre Square Homeowners' Association, Inc., the testimony, exhibits and other evidence submitted as set forth above, the Panel concludes as follows:

1. **Bel Pre Square Homeowners' Association, Inc. was validly formed and has proper authority.** The Panel concludes that the Declaration, and amendments thereto, establishing the Bel Pre Square Homeowners' Association, Inc. were validly recorded among the Land Records of Montgomery County, Maryland and that the provisions thereof establish valid, legal authority to levy assessments for dues, assess finance charges for unpaid assessments, install sub-meters for collection of water usage charges, and file suit for collection of delinquent assessments. Complainant's argument that the Respondent lacks legal capacity for failure to file the disclosures required to be filed pursuant to §11B-112(c) of the Real Property Article of the Annotated Code of Maryland is inapposite to the issues to be decided here. Under the provisions of that subsection, any homeowners association in existence on June 30, 1987 was required to file certain disclosures with the clerk of the circuit court, and any disclosures not deposited would be "unenforceable until the time they are deposited." However, the documents which are pertinent to the levy and collection of dues assessments, i.e. the Declaration, By-Laws and Articles of Incorporation, are not required to be deposited, presumably because they are already filed with the clerk among the Land Records. See §11B-112(c)(1)(ii). The Panel notes that the deposit required under this law should have been performed by HOC in 1987. Respondent argues that HOC, as a governmental agency, was exempt from the deposit requirements. The decision of the Panel set forth above renders the failure of HOC to file irrelevant to the matters to be decided in this case, and therefore, the Panel does not have to rule on that issue. However, the Panel is pleased to note that the Respondent has now made the required deposit and that the Respondent is, therefore, now in compliance with the provisions of the homeowners association depository requirements. The Panel, therefore, finds that all dues assessments, sub-meter water charges and finance charges assessed against Complainant by Respondent were validly authorized and collected and the Complainant is not entitled to a refund of any portion thereof.
2. **Bel Pre Square Homeowners' Association, Inc. is the equitable owner of Parcel B and has the authority and obligation to maintain Parcel B.** Complainant argues that the Respondent is not the legal owner of the common area, Parcel B, Bel Pre Square subdivision, according to the records of the State Department of Assessments and Taxation of Maryland and that, therefore the Respondent lacks the authority and

obligation to maintain the common area. Under the provisions of the Declaration, Article IV, Section 2, the HOC was required to convey legal title to the Bel Pre Square Homeowners' Association, Inc. at the time that thirty-four (34) homes had been sold by HOC, and the record reflects that forty-five (45) homes had been conveyed to homeowners as of 1999. Therefore, equitable title passed to Respondent many years ago, leaving HOC with only bare legal title to common area Parcel B. While the Panel recommends that the Respondent obtain and record a deed from HOC to the Respondent in order to complete the conveyance, equitable title held by the Respondent provides both the authority and obligation on the part of the Respondent to maintain that common area for the benefit of its members.

3. **Appointment of Management Agent and Election of Board of Directors were properly conducted.** The Panel concludes that all credible evidence in the record supports the finding of the Panel that (i) the present Board of Directors was properly elected by the members of Respondent at a meeting duly called for that purpose, (ii) the Board of Directors which selected M. R. Gross & Associates as management agent was also properly elected by the members of Respondent at a meeting duly called for that purpose, and (iii) the then-sitting Board of Directors selected M. R. Gross & Associates as management agent at a properly conducted Board of Directors meeting. Complainant has asked for a "nullification" of the management agent's contract. To the extent that Complainant's request pertains to the original selection of the management agent by the Respondent, that request is denied. The Commission and the Panel lack jurisdiction to rule upon the Complainant's request for a "nullification" of the management agent's contract as it pertains to the Board's failure to remove the management agent for his failure to adequately perform his duties, since §10B-8(4) indicates that a "dispute" does not include any disagreement that only involves the judgment or discretion of a governing body in taking or deciding not to take any legally authorized action. The Panel further notes that it is highly suspicious of the validity of the signatures contained in Exhibit #I which Complainant attempted to introduce. If, in fact, thirty (30) of the fifty (50) homeowners in Bel Pre Square Homeowners' Association, Inc. shared the opinions of Complainant as set forth in the so-called "Petition of Requisition" it is unlikely that the present Board of Directors would have been elected.
4. **Attorney's Fees.** Respondent has moved for attorneys fees under the provisions of Montgomery County Code, §10B-13 (d), which permits the hearing panel to award costs and attorney's fees to any party under certain circumstances. In this case, Respondent's request involves the contention that the Complainant has "filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith." The Panel finds that the Complainant presented no credible evidence to support any of her complaints against the Respondent. She seems to object to the collection by Respondent of any dues and the use of funds received by the Respondent for dues assessments for any purpose, including the maintenance of the common area of the development. The Panel finds such objections to be irresponsible and without merit.

Complainant has caused substantial expense to the Bel Pre Square Homeowners' Association, Inc. in legal fees in an amount which the Panel believes is reasonable for such services.

ORDER

Based upon the evidence on the record and for the reasons set forth above, it is this _____ day of _____, 2005, by the Commission on Common Ownership Communities:

ORDERED, that the relief requested by Complainant be and it is hereby denied; and it is further

ORDERED, that, within thirty (30) days following the date of this Order, Complainant shall reimburse Respondent the sum of \$2,729.50 for costs and attorney's fees incurred as a result of the filing of Complainant's Complaint.

Panel Members Antoinette Negro and Andrew Oxendine concur unanimously in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of a final Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Louis S. Pettey, Panel Chair

Copies to:

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